# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

PHILLIP RICHARD Claimant	)	
	)	
VS.		
	) Docket No. 225,62	22
DEFFENBAUGH INDUSTRIES	)	
Respondent	)	
AND	)	
	)	
ITT HARTFORD ACCIDENT & INDEMNITY	)	
Insurance Carrier	)	

## ORDER

Claimant requests review of the preliminary hearing Order dated October 30, 1997, entered by Administrative Law Judge Robert H. Foerschler.

## Issues

The Administrative Law Judge denied claimant's request for benefits after finding that claimant failed to prove he sustained personal injury by accident arising out of and in the course of employment with respondent . Claimant requested the Appeals Board to review that finding.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

Claimant works for the respondent as a truck mechanic. He alleges he injured his right arm on July 3, 1997, while lifting an axle. Respondent and its insurance carrier deny that claimant injured his arm at work and the Administrative Law Judge agreed.

The Administrative Law Judge had the opportunity to observe claimant testify and assess his demeanor and credibility. In this instance, the Administrative Law Judge did not believe claimant and the Appeals Board gives some deference to that assessment.

The Appeals Board also finds that claimant has failed to prove he injured his arm at work. Respondent and its insurance carrier presented credible, persuasive evidence that claimant initially advised respondent he had injured his arm while working at home and specifically denied hurting his arm at work. Also, claimant's supervisor, James Dodd, testified claimant's work orders did not indicate that claimant worked on an axle during the period in question. Further, the histories, or lack of same, contained in the medical records do not support claimant's contentions.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated October 30, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, affirmed.

#### IT IS SO ORDERED.

Dated this	day of December	1997

#### BOARD MEMBER

c: John H. Thompson, Kansas City, MO Steven C. Alberg, Overland Park, KS Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director